IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 348 OF 2004.

Namdeo Bali Kshirsagar & ors. ... Appellants.
Versus.
Dharma Mahadev Kshirsagar. ... Respondent.

Shri Atul P.Vanarse for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 24th July, 2006.

P.C.:

1. Not on Board. Taken up for hearing on the application of the Advocate for the Appellants.

2. This Appeal was dismissed for default on 21st July 2006. On the oral request made by the Advocate for the Appellants the Appeal is restored to file.

3. The learned Advocate for the Appellants contended that the Appellate Court committed an error by passing the decree for specific performance. He submitted that there is a statutory bar created by the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. He submitted that the Appellants had filed cross-objections for challenging the adverse findings recorded by the trial Court.

4. I have considered the submissions. The Courts below have accepted the case made out by the original

Plaintiff as regards the execution of the agreement for sale, payment of full consideration and delivery of possession in his favour. The Appellate Court relying upon a decision of this Court held that bar under the provisions of section 31 of the said Act of 1947 will not apply to the facts of the case. In view of the said finding, the decree for specific performance has been passed.

5. There is no reason to interfere with the findings recorded by the Appellate Court. No substantial question of law arises. Second Appeal is dismissed.

Judge.